

REMARKS

These remarks are responsive to the Office Action of May 3, 2007. Claims 37-43 and 45 are pending in this application. Claim 37 has been amended. The amendment is fully supported by the original disclosure and is consistent with the previous species election of FIGS. 6-12 of the instant application. Reconsideration and allowance of the instant application are respectfully requested.

In the Office Action, claims 37-43 and 45-46 were rejected under 35 U.S.C. 103(a) over U.S. Patent No. 5,689,850 to Shekalim ("Shekalim") in view of U.S. Patent No. 5,28,786 to Porat, et al. ("Porat"). This rejection is respectfully traversed.

The combination of *Shekalim* and *Porat* fails to disclose or make obvious the recited inventive toothbrush of independent claim 37.

A. All the Features Claim 37 are Not Disclosed by the *Shekalim* and *Porat*

In particular, neither *Shekalim* nor *Porat*, teaches or discloses a plurality of third cleaning/treating elements disposed between the first and second cleaning/treating elements, wherein each of said plurality of third cleaning/treating elements extends from one of a plurality of support structures having at least a portion that is rotatably movable relative to the cleaning head about a vertical axis extending upwardly from said one of a plurality of support structures, and wherein each of said plurality of third cleaning/treating elements is movable independent of any other third cleaning/treating element as recited in claim 37.

In considering *Porat*, the Office Action points to FIGS. 3a, 3b and 4 regarding the movement of the cleaning elements. Bristle array 58 rocks about a longitudinal axis of the handle e.g., about hinge 61. See a portion FIG. 4 reproduced below:

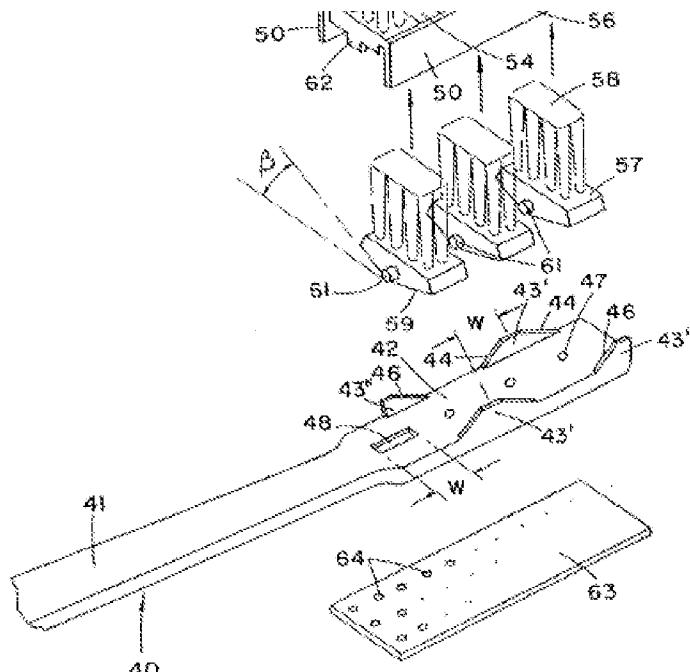


FIG. 4 of *Shekalim*

Clearly, the *Porat* brush is devoid of the feature wherein each of the plurality of third cleaning/treating elements extends from one of a plurality of support structures having at least a portion that is rotatably movable relative to the cleaning head about a vertical axis extending upwardly from said one of a plurality of support structures as recited in independent claim 37. When evaluating patentability under 35 U.S.C. § 103(a), all claim features must be considered, especially when they are missing from the prior art. *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988) (Federal Circuit held a reference did not render the claimed combination obvious because the examiner ignored a claimed feature that was absent from the reference). Hence, claim 37 is allowable for least the foregoing reasons.

B. Combination of References Teaches Away from the Claimed Invention

Furthermore, it is respectfully submitted that applied references teach away from the alleged combination of *Shekalim* and *Porat*. *Porat* requires the linear reciprocation of the handle about its longitudinal axis X to operate the arrays 58 as designed. (See *Porat*,

Col. 4, lines 59-67 to Col. 5, lines 1-16). While *Shekalim* may mention using conventional toothbrushes in the holder 20, the holder 20 motor combination does not reciprocate the inserted toothbrush along the toothbrush's longitudinal as required by *Porat*. (See *Shekalim*, Col. 3, lines 4-10 and Col. 3, lines 44-54).

12. Elastomeric ring 22 spaces the outer surface of the holder from the inner surface of the housing by an annular space 24, thereby permitting the holder, and the toothbrush 2 held thereby, to pivot within the housing about two orthogonal axes, perpendicular to the longitudinal axis of the housing, namely about the Y-axis and the Z-axis as shown by the arrows 26 in FIG. 1.

Shekalim, Col. 3, lines 4-10

Holder 20, and the toothbrush 2 inserted therein, are cyclically pivotted about elastomeric ring 22 by a drive including a rotary motor 30 connected to holder 20 by an eccentric coupling connected to the closed end wall 20b of the holder. The latter coupling includes a pin 32 rotated eccentrically by motor 30 and received within a transverse slot 34 formed in end wall 20b of holder 20, such that the rotation of eccentric pin 32 by motor 30 pivots the holder, and the toothbrush held thereby, about both the X-axis and the Z-axis as shown by the arrows 26 in FIG. 1.

Shekalim, Col. 3, lines 44-54

It is well established that if the proposed modification or combination of the applied art would change the principle of operation of the applied art being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959). Indeed, the proposed combination in the Office Action lacks an expectation of success and would defeat the intended purpose and operation of *Porat*. See *United States v. Adams*, 383 U.S. 39, 51-52 (1966) ("when the prior art teaches away from combining certain known elements, discovery of a successful means of combining them is more likely to be nonobvious.") Hence, claim 37 is allowable of at least the foregoing reasons. Claims 38-43 and 45-46 are allowable for at least the reasons of claim 37 for further features recited therein.

Conclusion

“That an inventor has probed the strengths and weaknesses of the prior art and discovered an improvement that escaped those who came before is indicative of unobviousness, not obviousness.” *Fromson v. Anitec Printing Plates, Inc.*, 45 USPQ 2d 1269, 1276 (Fed. Cir. 1997), *cert. denied*, 119 S. Ct. 56 (1998). Pending claims 37-43, 45, and 46 are believed to be in form for allowance, and an indication to that effect is respectfully requested at this time. If any fees are required or if an overpayment is made, the Commissioner is authorized to debit or credit our Deposit Account No. 03-2455.

Respectfully submitted,
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